

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. KIMBERLY ANN KOHLHAUSEN,

Plaintiff,

V.

SUNY ROCKLAND COMMUNITY
COLLEGE, *et al.*,

Defendants.

CASE NO. 7:10-CV-3168

OPINION & ORDER
[Resolving Doc. No. 65]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Defendants Clifford Garner and the SUNY Rockland Community College Federation of Teachers Local 1871 (“Union Defendants”) move for relief from this Court’s February 9, 2011 Opinion and Order. [Doc. 65.] The Union Defendants once again argue that, in partially granting the Union Defendants’ motion to dismiss, “this Court overlooked [their] motion to dismiss the Plaintiff’s Fourteenth Amendment Equal Protection claim brought pursuant to 42 U.S.C. § 1983” [Doc. 65 at 10.] The Union Defendants now seek to have that claim dismissed.

Though the Union Defendants “concede that they did not address Plaintiff’s Fourteenth Equal Protection claim in any detail in their moving papers,” [Doc. 65 at 10], they now hope to remedy this failure through a motion for reconsideration. However, as they admit, the Union Defendants’ motion to dismiss stated no grounds for dismissing Kohlhausen’s equal protection claim. Accordingly, Defendants’ motion failed to provide sufficient notice to the Plaintiff as to the

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desired grounds for dismissal; it also failed to meet the Defendants' burden to show that no legally cognizable equal protection claim exists. *See Sazerac Co., Inc. v. Falk*, 861 F. Supp. 253, 257 (S.D.N.Y. 1994).

The Court held the same when the Union Defendants moved for reconsideration on the same grounds by way of a March 9, 2011 facsimile to the Court and again during a March 17, 2011 status conference. The Union Defendants have presented no new or convincing reason for this Court to now hold otherwise. If the Defendants believe Kohlhausen's equal protection claim must fail, they may move for summary judgment.

Accordingly, the Court **DENIES** the Union Defendants' motion for relief from the February 9, 2011 Opinion and Order.

IT IS SO ORDERED.

Dated: May 5, 2011



JAMES S. GWIN
UNITED STATES DISTRICT JUDGE